

JANUARY 21, 2020 MINUTES

CBA Real Estate Law Section Council

Date: Tuesday, January 21, 2020 – 3:00 p.m.

Colorado Bar Association

1290 Broadway, Ste. 1700

Denver, Colorado 80203

1. **Call to Order 3:07 p.m.**..... Suzanne Leff

2. **Introduction of Guests**..... Suzanne Leff

See attached Attendance Roster

3. **Approval of November Minutes** Suzanne Leff

Approved.

4. **Financial Report** (\$93,968.68 as of December 31, 2019).....Melinda Pasquini

5. **Chair’s Report**..... Suzanne Leff

a. CBA Updates and News Suzanne Leff

Ms. Larson absent and still serving in and interim capacity as the Interim Director. Mr. White – Legislative Liaison introduced. Mr. White will be attending RESC meetings during the legislative session.

b. Colorado Legal Community Fair at CU..... Suzanne Leff

Mr. Jung and Brianna Ms. Dowling attended and reported: Several CBA Sections were represented at the event. They talked to 10 students -- *Candy Land* theme for the event where the students Got stickers if they talked to someone and were then eligible for prizes. Most of the students Mr. Jung and Ms. Dowling talked to thought they knew which area of practice they would like to pursue after graduation, but some were trying to figure out what they want to do. So was good to help discuss the practice areas with students. The event was useful for the students.

Suggestions: Banners, name tags. Mr. Jung – Boulder County Bar Association has magnetic name tags. Everyone could wear them. Name tags would be good for all RESC members in general. Then you can wear your name tag at other bar events. The Family Law Council has moved to name tags. Mr. White noted that the Legislators request that name be worn when at the Capitol on legislation.

Mr. Jung and Ms. Dowling said a banner for table is needed. The students did not know what table to go to – it was hard for students to walk up and initiate conversation. All of

the Section had the same CBA swag. Ms. Leff suggested magnifying glasses for real estate at next year's event -- something unique to hand out. The magnifying glasses could be used for luncheon CLEs as well.

c. RESC Nominations..... Suzanne Leff

Appointment of nominating committee 10 days before this meeting and announcement 5 days before this meeting. Melinda Pasquini will chair the committee. Ms. Nolan and Mr. Aldrich have been asked to serve on the committee and have agreed to the appointment.

d. Offsite Meeting..... Suzanne Leff

Last two years CU and DU. Not too effective. And then a dinner afterwards. The officers are considering going to Ft. Collins for this year's meeting; or to Jeffco / Golden. Questions: Do we want to hold the meeting on the regular meeting date or choose a different date? Suggestion: We could move meeting to a Friday, so can stay overnight in the Ft. Collins area.

Ms. Leff suggested sending out a poll. Ms. Arnold noted that Ft. Collins is only available as a site in March or May. Council funding was provided in the past for hotel rooms – but the Council has moved away from that in the past. Mr. Calvin stated that the most successful off-site meeting was in Ft. Collins. Ms. Waggoner agreed and noted that the event is especially good for developing relationships among Council Members.

May sounds most likely as well as Ft. Collins. Ms. Leff intends to circulate a poll before deciding.

e. Update on Fairways at Buffalo Run Case..... Suzanne Leff

Mr. Meseck reported that everything has been briefed and we are waiting for the CO Supreme Court to rule on whether they will grant cert. The Associate Attorney who drafted the pleadings on behalf of the section has resigned from Mr. Meseck's office. If Certiorari is granted, RESC will need to have a different attorney do the primary drafting; although Mr. Meseck left the option open with his former associate.

f. **Evans v. Evans – Opportunity with Family Law Section** Suzanne Leff

A family law attorney summarized an “abstract” of the Court's order as it relates to real property and then recorded her abstract. No certified court order was recorded. Is this a spurious document? The Court ruled it was not. But the RESC has concerns about the process, race notice statute (Recording Act) and finding a better way to approach a situation like this one. Family Law courts do not create stand-alone orders about real estate. Orders have more information than the parties would want recorded in the public records.

The case was discussed at POETS and real estate attorneys are not comfortable with this outcome. Points discussed by Council included the following comments: The attorney needed to get a transcript of judgment, but since judgment had not entered, a transcript was not an option for this attorney. The recorded abstract was a way to put people on

notice – like a lis pendens, but the attorney did not follow the lis pendens rules. There is a question about whether an attorney should be creating a document like this. Lots of problems, but there could be similar activity occurring. The case could go beyond family law and become problematic.

Ms. Leff suggested engaging with a family law attorney who is practicing in this area who could jointly write an article for the Colorado Lawyer about this case with practice suggestions.

Ms. Brimah suggested that this case could be a luncheon topic – jointly with the Family Law Section. The topical lunch could then move to an article for the newsletter and then to a Colorado Lawyer article.

Mr. Calvin pointed out that family law judges could benefit from education on this topic. Discussed ways to engage with the Judicial Section.

ACTION ITEMS

- a. 2020-2021 Real Estate Section Dues Suzanne Leff

RES is not yet putting together its 2020-2021 budget. But RESC needs to set the dues before the budget process. RES' current dues are: \$30/person/year. In the upcoming budget the RESC will need to account for the increase in the administrative fee from \$5 to \$10 per person. The impact on the budget will be about \$7500. We have 1400-1600 Section Members. Then the CBA's plan is to adjust the administrative fee by \$0.25/ year per member.

RESC budgeted \$58,610 of income for the current year and expenses of \$58,585. We have \$95,000 attributable to the Section.

Ms. Ham gave a comparison to other Sections. Trust & Estates \$30; Business Law \$35; Tax \$30; Elder Law \$30. Real Estate \$30; IP is at \$40 (staying at \$40). Immigration and ADR and International Sections are moving to \$30. Most Sections are staying at their current dues as they have made adjustments in the last year or two.

RES has a robust balance and funds available to cover the increase with reserves – do we want to offset with the reserve balance or increase dues?

Ms. Waggoner noted that the reserve balance when she was Chair was \$25,000 in 1993 and has been growing.

Ms. Arnold and Ms. Leff noted that the carryover last year was \$73,000 and increased the balance to \$95,000.

Robin Nolin moved to keep dues the same next year at \$30/per person. Seconded. Approved.

- b. **Colorado Title Standards 38-35-101** Suzanne Leff

RESC took action at the end of the last legislative session to recommend legislation to cause the acknowledgement form to conform to the notary revisions in C.R.S. 38-33-101. Ms. Leff would like for RESC to reconfirm the request, if legislation presents itself in this Session – or RESC could request a bill in the 2021 Session.

Mr. White noted that the request may not fit this Session, but may be addressed in 2021. He will not take this matter to LPC until there is legislation for consideration.

Amy Brimah moved that RESC reaffirm the requested amendments to C.R.S. 38-35-101 in either the 2020 Session (if legislation is available for amendment) or a new bill in 2021. Approved.

REPORTS AND INFORMATIONAL ITEMS

6. **CBA Title Standards** Catherine Hance and Geoff Anderson

Mr. Anderson reported that Title Standards reviewed the comment about checking the public records for 24 hours during the recording day - that was rejected by RESC in 2019. The comment is not ready yet for review; but Title Standards will bring it back in the future.

7. **In the News** – Denver Camping Ban Melinda Pasquini

The County Court’s Order was attached to the Agenda. The Order is on appeal to the District Court – and then may be appealed to the CO Supreme Court.

Ms. Pasquini reported that the 9th Circuit case in Boise held that that as long as there are enough shelter beds, a camping ban is not unconstitutional. The U.S. Supreme Court did not grant certiorari review of the 9th Circuit case: If there are enough shelter beds, then law enforcement can constitutionally enforce the camping ban.

The issue considered by the 9th Circuit is nuanced in the Denver case. What if dogs are not allowed in shelters and the person has a dog? Mr. Garnett from Boulder has written an amicus brief in the Denver camping ban appeal. Court watchers are thinking Denver’s decision will be the one that works up to the U.S. Supreme Court. So we will continue to monitor the progress of the case.

8. **Legislative Process** Melinda Pasquini

Attached to the agenda is the Guide of how to review bills. Ms. Pasquini thanks Council members for their hard work. A lot of bills came out quickly – more than expected. If the recommendation is to “monitor” the bill, be sure the Council Member to whom the bill is assigned continues to monitor it. Discussed ways to monitor – Bill Track 50 or the State website (or both). Ms. Pasquini and Mr. White ask that members let them know if you see something in a bill that needs additional analysis.

Mr. White pointed out that on the General Assembly’s website, the next action is shown.

9. **Legislative Update**..... Andy White

The Notary Bill – Is still a work in process. Chuck Calvin is working on it. It will come as SB-96, but has not been introduced yet.

a. Current Bills

i. **HB20-1009** – Suppressing Court Records for Eviction Cases

Noted for monitor (Ms. Schmitz) both commercial and residential cases. Unless an order for possession for the landlord enters, all eviction cases would be suppressed for “ever more.” Mr. White thinks this bill is likely to pass and RESC should give feedback. Thursday (1-23) the bill is scheduled in House Committee – strong chance of passage given the sponsorship.

Ms. Arnold moved to carve out commercial leases and take an “Amend” position. Passed.

Ms. Pasquini will draft the LPC memo with the recommended commercial carve-out.

The Litigation Section is also reviewing the Bill.

ii. **SB20-093** – Consumer Arbitration Bill (Working Group Members – Mr. Jung and Mr. Aldrich)

Mr. Jung reports that this Bill has great import – changing arbitration clauses going forward. The Bill changes disclosure requirements and the types of the clauses that can be included in “consumer” contracts. Mr. White reports that the Bill is scheduled for its first committee hearing one week from tomorrow. This is a Leadership priority bill. Challenge – working in collaboration with proponents. But the CBA did not receive this Bill in advance and is playing catchup.

“Monitor” the Bill.

iii. **HB20-1046** – Payments on Construction Requirements – Review by Mr. Meseck.

Mr. Meseck’s memo is attached to the Agenda. He recommends opposing the bill. Ms. Arnold noted the comments from the Construction Law Section and favors an Amend position. Construction Law addresses the following concerns:

1. Inadequate homeowner protections. Although the statute states that a subcontractor must be "satisfactorily performing," there should be a definition of what that means. If there is a good faith dispute about whether payment is due or what progress is being made, there should be some mechanism to allow the homeowner to withhold a larger portion of payment.

2. Third-party payments. The statute does not address what occurs if the property owner is depending on funds from a third party, such as an insurance carrier or construction lender. If a homeowner is awaiting payment, it seems like bad policy to penalize the homeowner for the delay. I suppose the homeowner could file a

separate action against an insurance company for delay damages under C.R.S. 10-3-1115/1116, but I don't think that is the intent of this statute. Such delays are a real problem for both homeowners and subcontractors, but making the homeowner/GC liable for penalty interest does not seem like the best solution.

3. Interaction with existing trust fund statute. It is unclear how this statute would interact with C.R.S. 38-22-127, which already requires general contractors to hold funds in trust for subcontractors and deems a violation to be civil theft, which triggers its own treble damage and attorney fee claim. Thus, subcontractors already have a remedy for some abuses. The statute should clarify if it intends to operate in addition or in place of this statute. For example, if a general contractor takes project money to pay other expenses, is the intent for this to result in both a claim for civil theft under the old statute and penalty interest under the new statute?

Mr. White believes that Construction Law will take an “oppose” position when they vote even though Ms. Witt’s comments (above) would indicate an “amend” position.

Motion to Oppose: Passed with 12 votes. Two votes to Amend.

- iv. **SB20-012** – Transmission of Renewable Energy through Transmission Lines Crossing Property Subject to Conservation Easements – Review by Mr. Jung. Should RESC propose amendments or recommend opposing bill to LPC?

Mr. Jung reviewed the Bill. The reason the Bill was introduced: People have wind and solar energy generation and they are looking to transmit the energy off their property – yet, they also have conservation easements. The problems are summarized in Mr. Jung’s memo attached to the agenda.

Discussed the current benefits of conservation easement – they are required to exist in perpetuity. This Bill would amend existing conservation easements. The Bill does not differentiate between underground or overhead lines. Mr. Jung recommends either amending or opposing. If RESC recommends amending, overhead lines should be removed.

Ms. Kube notes that different interests are affected. A lot of conservation easements would not allow transmission lines in the first place. This Bill is likely resulting from Neighbor fighting. The Bill is geared toward wind or solar and challenges with the collecting the power and then connecting the power into the power grid.

Mr. White notes that this is a difficult Bill to oppose. He recommend that the Bill be amended – a better approach given the work done on the Bill. Natural Resources and Tax Sections are reviewing. The Bill was vetted by utility companies over the summer.

Motion to take an Amend position – Mr. Jung moves that the amendments include: further defining “primarily to transmit renewable energy consistent

with conservation purposes.” Amend to exclude overhead transmission lines from the bill. Passed.

- v. **SB20-047** – Appraiser Bill reviewed by Mr. Aldrich, see Interprofessional Committee report below.

Provides exemptions for internal appraisers. Language is being updated. “Agent” is defined on the Federal level. FDIC guidance. Did not indicate why “agent” is not defined in the Bill. Mr. White is seeking clarification. Interprofessional is not taking a position.

Monitor.

- vi. **HB20-1096** – Series LLC’s

Mr. Syz reviewed.

Mr. White reports that **LPC** reviewed this Bill today and **voted to oppose the bill** as recommended by the Business Law Section. The Bill would codify to the Model Act which allows for series LLCs. Series LLCs allows for separating out liability across a “mother ship” LLC. The Model Act is difficult to integrate into Colorado’s Corporate Code.

Mr. Calvin noted that the Bill bypassed the Uniform Laws Commission - a strong breach of protocol.

- b. Potential Bills

- i. **Special Districts**

- ii. Uniform Law Commission – Partition of Heirs Act....Suzanne Leff, Jean Arnold

Commission decided not to pursue this session. Newsletter item to the membership to ask about whether this is an issue. Ms. Arnold will write a short article for review by Mr. Calvin.

- 10. **CCIOA Task Force Committee** Robin Nolan

- a. **Report on Community Association Manager Licensing and HOA**

Ms. Nolan reported that the Task Force met and talked about DORA’s report. The report is attached to the Agenda: Be ready in case there is legislation that comes out of the report. 70,000 surveys were sent and 500 returned. The questions raised are: (1) is there enough data: (2) is licensure needed? The consensus is to improve transparency; reduce costs to HOAs; and promote homeowner’s rights. Transparency could mean at the point of sale.

Possible CCIOA amendment – Give notice to homeowner members of board meetings.

- 11. **Interprofessional Committee** Amy Brimah, Jim Meseck

Mr. Meseck the meeting was last Thursday. The biggest point of discuss was the Remote Notary (45 minute conversation). Convenience and concerns (fraud) and anticipated changes to real estate transactions in CO.

LTAC – noted that it is hard for smaller counties to find (and afford) the large machines used to record large plat maps.

Manufactured homes as part of affordable housing were discussed. If the manufactured homes are permanently affixed, what are the requirements to transfer title?

12. **CBA Legislative Policy Committee** Chuck Calvin

Nothing to add to what Mr. White reported. Meeting are now at noon on Tuesdays.

Mr. Calvin added to Mr. Meseck’s comments above about County recording office resources and the formation of the electronic recording technology Board. Mr. Calvin serves on the Board. The Board gives grants to small counties. There was a Board meeting yesterday as part of the County Clerks annual convention. When the current legislation sunsets in 2022 – there will remain a dire need for smaller counties to continue to receive funds to upgrade their technology. Many counties have less that 1000 recording per year. The annual maintenance fees on recording equipment is more than they collect at \$1000 per year.

13. **Board of Governors** Katy Dunn, Dan Sweetser

None.

14. **Community Service/Charitable Committee** Robyn Kube, Jim Meseck, Erin Clark

The Committee and others held a conference call on January 8, 2020. During that call it was decided that the Committee would pursue making (or arranging for) presentations on Law Day (May 1) directed to students in metro school districts relating to voting and voter registration – the theme for this year’s Law Day is “*Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100.*” The group agreed to solicit feedback from the Section Council regarding the Committee’s intentions. In addition, various participants agreed take steps to make contact with local schools to see how those presentations could be arranged.

Erin Clark can help facilitate with the schools.

Suzanne Leff contacted DPS – in North Denver. The Sam Carey Bar and CHABA are planning to participate and RESC can integrate with their efforts.

Joey Lubinski inquired at his kids’ school. There is interest, but the school would like to have an event on another day (not May 1).

A follow up meeting will be scheduled later in January or in early February.

15. **Access to Justice Liaison**Andy Toft

The Real Estate Section is the only section with a liaison. Justice Hart is the chair of Access for Justice. The goal is to explore: How to service poor through middle class to get justice. Mr. Toft's is a "position in formation." Justice Hart would like the RES to focus on evictions as there is a big need in this practice area. The RESC should explore how to help provide low cost and pro bono in the FED center.

The Courts in the mountain communities provide pro bono advice over the web. Mr. Toft talked to Judge Shamis in Lake County. He has a pool of lawyers people can contact on the day of their return hearing. Mr. Toft is getting information on the options.

16. **Regional Liaison**..... Doug Tueller

Ms. Leff reports that Mr. Tueller reaching out around the State to communicate with RES members and constituents. He will also solicit interest for Council nominations from outside the metro area to maintain regional diversity on Council.

He is also remaining active with the Colorado Lawyer affordable housing series until it is complete.

17. **CBA Young Lawyers Division** Liz Deline, Diana Mendez

Ms. Deline reports on an upcoming YLD event on Feb 11 - *You be the Judge CLE*. The CLE will address the path to judgeship. YLD is looking for cross marketing and sponsorship. YLD is also working on the outstanding young lawyer.

Two seats were filled from YLD for the Christmas Party. Last year the available sponsored seats were gone in the first 11 minutes. Ms. Jess Ham said that this year CBA cut back on advertising the event so that there were fewer emails arriving in members "inboxes." The distribution lists need work and she will work with Heather (for YLD) on the distribution lists so that the Christmas party for 2020 is better advertised.

18. **Colorado Housing Council**Robin Nolan, Jeremy Syz

Rep. James Colman attended. The Council discuss impediments to converting apartments to condos; the Arbitration bill; and Metro Districts / Special Districts.

19. **Colorado Association of Realtors Liaison**Damian Cox

No report.

20. **CBA Forms Committee** Damian Cox

Mr. Anderson reported that the Committee is working on the post-closing occupancy agreement; and will work on manufactured housing next.

21. **CBA Trust and Estate Section**..... Chad Rounds

Did not meet in January. Mr. Rounds noted that at the last meeting, T&E needs to provide education to make sure attorneys don't violate ethics rules by destroying original estate planning

documents - Rule 1.5. After January 1, 2021, there will be an exception for attorneys to destroy such documents if they follow the procedures of the new law. If an attorney is holding original wills, etc. they can upload the documents and send to the state administrator.

The trend in T&E and Elder Law is to not hold original documents. But some firms still have them. Those firms can take advantage of the new law starting next year.

22. **CBA Tax Section** Tyler Murray, Chris Levkulich
No report.

23. **CBA Ethics Committee**.....Deanne Stodden
Ms. Pasquini will send out Ms. Stodden’s email to the Council. Ms. Stodden’s email came in after the agenda was sent.

24. **Communications**Director – Brianna Dowling
Ms. Schmitz reports that the newsletter went out in December. The Committee is working on the next one.

- **Communications Committee (RE Section Web Page (COBAR)/Newsletter/ Web Discussion Group)** Brianna Dowling, Angie Schmitz, Adam Aldrich
- **Colorado Lawyer Committee** Robin Nolan, Bryan Schwartz, Adam Aldrich

Ms. Nolan reports that the Committee is finishing the affordable housing series. Ms. Nolan asks for idea and reminded the Council of the Colorado Lawyer requirements. Chris Bryant (Editor) would like a 1-2 page outline. He will get back to the proposed author(s) with ideas and comments. Once approved, the article should be 3-4,000 words.

25. **Education/CLE Committee**Amy Mowry, Bryan Schwartz, Angie Schmitz

Ms. Schmitz reports that the Spring Update will be in March: Anatomy of a Commercial Real Estate Transaction. The Fall Update will be “Anatomy of a Residential Real Estate Transaction.”

26. **Education/Topical Lunches Committee** Amy Brimah, Ron Jung, Jeremy Syz

28 attended in December.

February – Real Estate and Marijuana.

March is open.

April – Insurance in real estate issues.

27. **Membership and Practice Development Committee**Amy Mowry, Ron Jung, Erin Clark

Ms. Clark collected 15 names to be ambassadors.

INACTIVE

- 28. **Business Law Section**..... Chris Payne
- 29. **CBA Cannabis Law Committee** TBD
- 30. **CBA ADR/Mediation Committee** Geoff Anderson
- 31. **CBA Eminent Domain Committee** Jody Alderman

NEW MATTERS

ADJOURN 5:15 P.M.

ATTENDANCE ROSTER
Real Estate Law Section Council
January 21, 2020
COLORADO BAR ASSOCIATION

NAME	PRESENT	EXCUSED	ABSENT
Officers:			
Suzanne Leff – Chair	X		
Jean Arnold – Vice Chair	X		
Melinda Pasquini - Secretary	X (by phone)		
Katy Dunn – Board of Governors Representative		X	
Members:			
Adam Aldrich (2022)	X		
Amy Brimah (2020)	X		
Erin Clark (2022)	X (by phone)		
Brianna Dowling (2021)	X (by phone)		
Ron Jung (2021)	X		
Robyn Kube (2020)	X (by phone)		
Jim Meseck (2021)	X		
Amy Mowry (2020)	X (by phone)		
Robin Nolan (2021)	X		
Angela Schmitz (2022)	X		
Bryan Schwartz (2020)	X		
Jeremy Syz (2022)	X		
Committees / Liaisons:			
Chuck Calvin – Legislative Policy Committee Liaison	X		
Chad Rounds – Trusts and Estate Liaison	X		
Damian Cox – Forms Committee Liaison	X		
Deanne Stodden – Ethics Committee Liaison	X		
Geoff Anderson – RE Title Standards Liaison	X		
Jody Alderman – Eminent Domain Committee Liaison			X
Chris Payne – Business Section Liaison		X	
Tyler Murray – Tax Section Liaison	X (by phone)		
Chris Levkulich – Tax Section Liaison		X	
Liz Deline – YLD Liaison	X (by phone)		
Diana Mendez - YLD Liaison			X
Catherine Hance –RE Title Standard Committee			X
Joey Lubinski – Immediate Past Chair RESC	X (by phone)		
Doug Tueller – Regional Liaison		X	
Andrew Toft – Access to Justice Liaison	X		
Staff & Guests:			
Jess Ham	X		
Amy Sreenen (CBA)			X
Amy Larson (CBA)		X	
Bridgett Moore(CLE)	X		
Andy White (CBA)	X		
Julie Waggoner, Past Chair RESC	X		

Dan Sweetser, Past Chair RESC			X
Chuck Calvin, Past Chair RESC	X		